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## **Remarks By Elwood L. Thomas Upon Taking the Oath of Office of Judge of the Supreme Court of Missouri\***

I first want to thank Governor Ashcroft and the Appellate Judicial Commission for the confidence they have shown in me in selecting me for this important position. I was honored to be on the panel with two very fine judges who are friends of mine: Judge Dick Webber of the First Judicial Circuit, and Judge Robert Ulrich of the Court of Appeals, Western District. I am very honored to have been selected from that panel, and I pledge to the members of the Judicial Commission and to Governor Ashcroft that I will do everything within my power to make each of you proud of your decision.

I also want to thank all of my friends, the lawyers and support staff at Shook, Hardy & Bacon, my former students, the members of the judiciary and the many other people for their support and approval of the selection process. My only wish is that I could pare down your expectations to something which is in the range of what I might be able to fulfill. If I can be half as good a judge as you expect me to be, I will be doing well. Actually, half is probably about right since most of you are lawyers and in every case, about half the lawyers are happy and the other half are not.

A couple of days after my appointment, I received a telephone call from my good friend, Jack Edwards. Someone came into his office the day before and said, "Well, Governor Ashcroft sure solved all of Clarence Thomas' problems." Jack said, "Oh, how's that?" And his friend said, "Well, he appointed him to the Missouri Supreme Court." Jack replied, "No, you have your Thomases mixed up, that's Elwood Thomas." I observed that it isn't often anyone gets the name "Elwood" mixed up with anything.

Later, I thought about my conversation with Jack and I wondered whether Governor Ashcroft had solved all of my problems. As my mind played with that question, I thought about the old saying—something about walking a mile in another man's shoes. I do not remember the rest of the quotation, but the point is that when you walk a mile in the other person's shoes, you will gain new insights; most of all, you will become aware of his or her worries and problems.

I thought back to my experiences in law school, which, of course, started with me as a law student facing my first final examinations; it was worse than any lawsuit I have ever prepared for trial; test week was essentially a lost

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\* October 1, 1991. The editors wish to thank Mrs. Sue Thomas for her graciousness in granting permission to publish the text of this speech.

month. I remember Sue was waiting for the first one to end and, after ten days of only seeing me about once during each 24 hours, she planned that we go out to dinner to this very special place after my last final. We did, and we had no more than sat down at the table when my head was on my plate, and I was sound asleep.

Through all those test weeks, never once did I give a single thought about the difficult time my professors had writing those tests and what a never-ending job it was for them to grade them. It never entered my mind. That is, until I was on the other side of the teaching podium, writing and grading finals. I always said to myself—I never had the guts to say it to anybody else—there is no undertaking on earth to which is devoted so much skill, intellectual challenge and hard work (and the students would say cunning) as writing a good final examination question so that it has the right number of issues, some of which are easy to see, most of which were hidden away, which takes the right amount of time and provides enough of a challenge, but not too much, and is appreciated so little by those for whose benefit it is designed. But believe me, I never undertook to convince the students of that fact or anything even close to it. I may be an advocate; but I'm not a magician.

Then, I left the academic world and went to Kansas City and Shook, Hardy & Bacon. It has been a great 13 years. I will miss the associations with my partners, with all the lawyers and with a dedicated and loyal staff. They have always been very patient with me, particularly in allowing me to give them a lot of advice and, of course, they gave me a lot back; it has always been a two-way street. The most rewarding thing about the whole experience is that the best common advice, which went back and forth and which I do not ever recall being contradicted, was the simple advice—do quality work. We will give you the support and the equipment; you furnish the time and the effort to do things right. Believe me, that's the only way in the world to practice law and, when you can practice this way, it is the greatest profession in the world.

I have always been a great believer in the advocacy system. Wigmore said the greatest engine of the truth is cross-examination; I believe the greatest engine of justice is the advocacy system. When it is done right and all the participants carry out their roles, it produces a magic answer that no one participant could produce alone. When I picture the advocacy system, I see three participants, like a three-rail railroad track winding through a steep mountain pass: one advocate on each side of the issue and a judge or court in the middle. If the system works right, the advocates are good lawyers: they take time to get prepared, know the law and know the facts; they are articulate; they are persuasive; they devote 100% of their efforts to the position of their clients. Even though they devote 100% of their efforts to the interest of their clients, good advocates do not have tunnel vision. They leave the emotions of the cases to their clients. They recognize the weaknesses of

their cases as well as the strengths. They need to have the courage, maturity and judgment to add measured restraint to their clients' enthusiasm for their side of the lawsuit while still being optimistic and positive about their clients' position. Young lawyers often mistake being ugly, disagreeable and downright mean with being a strong advocate—there is a vast difference. One of the keys to success in the practice of law, as well as being happy in the practice of law, is learning the fine balance between aggressively representing your client and still being a person whose work will be trusted and who will be respected, not only by your colleagues but also by your opponents and the judges who hear your cases.

One of the good things about being an advocate is that you do not have to worry about how the results of your case will affect other people in other cases in the future. Of course, you would like to convince the judge that ruling in your favor will create good precedent because that helps bring him to your position. But, by and large, you do not have to worry about the future; you can live for today's lawsuit and what happens in this case. On the other hand, because there are two advocates in every lawsuit, almost always one of them ends up being a loser and one a winner—at least on the face of it. Winning is an enormous high; losing can be a very low low. Life as an advocate is the ultimate roller coaster, and you have to learn to enjoy the highs and survive the lows.

Five days after I was appointed, I traveled to St. Louis to argue an appeal before the Eighth Circuit. I holed up in my hotel room, rehearsed my argument, and spent a restless night turning over and asking myself, "I wonder what Judge Hainey is going to ask me or what Judge Bowman is going to say about this issue." But, speaking to the question of whether Governor Ashcroft had solved all my problems, I quieted my thoughts by saying, "This is the last time I have to go through this. Governor Ashcroft really has solved all of my problems."

Then, about a week ago, I picked up my first set of briefs and started reading in preparation of hearing my first oral argument as a judge. Suddenly, I realized Governor Ashcroft had not solved all of my problems. I had stepped across an invisible barrier into a new role in the advocacy system, one which had hardly entered my mind even a month before—sort of like my feelings towards the law professor's problems when I was a law student. I read the first brief and thought, "That's a pretty good argument." Then, I laid that one down, picked up the other brief and I realized it was a good argument too. I never had that problem when I was an advocate; my client was always right. All of a sudden, I was saying to myself, "I have to make a decision that is fair to this plaintiff and this defendant that resolves their problem. But, I also have to be concerned about those other plaintiffs and defendants who will come down the road with the same kind of problem—or a problem that may actually be different but the answer may be generated by the decision that I and my colleagues on the bench make in this case." I sort of panicked.

By this time, I had realized Governor Ashcroft had not solved all my problems. Nevertheless, I say to the members of this court, I am ready to walk in your shoes. I will need your help, your guidance and your understanding. I know we will disagree on legal issues; if we do not, we will not be doing our jobs. If there is only one right answer, we could set a computer on the bench and it could check the right box as to who should win and who should lose. As we agree and disagree in the future, may we always, above all, be congenial, respectful and thoughtful about the other person's opinions and viewpoints. May we listen with honest interest, open mindedness and a willingness to put ourselves in the other person's position and critically re-examine our own position. If we are willing to do this, I firmly believe that out of our advocacy system will truly come a magic answer and, time and time again, we will be successful in not only solving the dispute between the parties before us, but in creating answers and solutions for the problems of generations to come. I know we can rely upon the lawyers of this state to be the superb advocates that are so essential to our system of justice.

With your help, I pledge to you that I will do everything within my power to do my part to help this Court fulfill its role, along with all the other courts of this state, in bringing to the citizens of Missouri a system of justice in which they have confidence and pride—a confidence and pride that will be fully justified and that will be earned through hard work, mutual respect and team work, issue by issue, decision by decision, and day by day.

Thank you.